



Decision

Matter of: Knightsbridge Construction Corp.

File: B-258366

Date: January 9, 1995

Joel S. Rubinstein, Esq., Bell, Boyd & Lloyd, for the protester.

William E. Thomas, Jr., Esq., Department of Veterans Affairs, for the agency.

Katherine I. Riback, Esq., and Paul E. Jordan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Bid submitted in abbreviated corporate name was properly determined to be responsive where the company was registered to do business under its abbreviated and full corporate names.

2. Contracting officer properly waived bidder's failure to acknowledge receipt of two solicitation amendments which either restated information already in the solicitation or provided certain updated standard provisions which were not inconsistent with the initial solicitation language, and did not impose additional legal obligations on the bidders or impact price.

DECISION

Knightsbridge Construction Corp. protests the proposed award of a contract to CEA Inc. under invitation for bids (IFB) No. 620-19-94, issued by the Department of Veterans Affairs (VA) for the installation of a sprinkler system in a VA building in Montrose, New York. Knightsbridge contends that CEA's bid should have been rejected as nonresponsive because the name in which the bid was submitted, "CEA Inc.," is not a legal entity in the state of Massachusetts, and because CEA failed to acknowledge two amendments to the IFB.

We deny the protest.

The IFB was issued on July 27, 1994, with a August 30 bid opening date. The IFB stated that the work on the contract will commence on February 27, 1995, and that work on the

Phase 3 asbestos abatement will start on April 27. Two amendments to the solicitation were issued. Amendment No. 1 stated that a notice to proceed would not be issued until February 1995, and restated that Phase 3 of the asbestos abatement would not commence until April 27. Amendment No. 2 substituted the updated versions of the following Federal Acquisition Regulation (FAR) clauses: the "Prompt Payment for Construction Contracts" clause at FAR § 52.232-27, the "Disputes" clause at FAR § 52.233-1, and the "Taxpayer Identification" clause at FAR 52.204-3. Additionally, amendment No. 2 included a technical correction to the "Warranty of Construction" clause at FAR § 52.246-21.

Five bids were received, with the apparent low bid submitted in the name of "CEA Inc." CEA's bid was signed by James McCorry, as Vice President, and stated that CEA is incorporated in Massachusetts. CEA's bid contained no acknowledgement of the two solicitation amendments. The contracting officer determined that CEA Inc. was simply a shortened version of Computer Engineering Associates, Inc., which was incorporated in the state of Massachusetts. The contracting officer also determined that CEA's failure to acknowledge the two amendments could be waived under FAR § 14.405(d)(2), because the amendments had no effect on price, quantity, quality, or delivery of the item bid upon. While the agency has determined that CEA is in line for award, the award of the contract has been withheld pending the disposition of this protest.

Knightsbridge first argues that CEA's bid is nonresponsive because it was submitted in other than the bidder's legal name. As such, the protester asserts that the bidder cannot be legally bound, making the contract unenforceable. We disagree. "CEA Inc." represents the initials of the company's official name, "Computer Engineering Associates, Inc." According to a report from Dun & Bradstreet, this company is registered under both, its full name and its abbreviated name, and is incorporated in the state of Massachusetts. Even if the protester were correct that CEA was not registered to do business under its abbreviated name, where a bidder uses slight variations in its name in bid documents, the bid is not defective so long as it can be established that the different names refer to the exact same entity. Americorp, B-232688, Nov. 23, 1988, 88-2 CPD ¶ 515. In short, CEA would be bound by the terms of its bid, thus its bid is responsive.

Knightsbridge next argues that CEA's bid is nonresponsive because it failed to acknowledge receipt of two amendments. Generally, a bid which does not include an acknowledgment of a material amendment must be rejected because, absent such an acknowledgment, the bidder is not obligated to comply

with the terms of the amendment and its bid is thus nonresponsive. K Servs., B-238744, June 13, 1990, 90-1 CPD ¶ 556. The failure of a bidder to acknowledge receipt of an amendment may be waived, however, where the amendment is not material. Star Brite Constr. Co., Inc., B-238428, Apr. 5, 1990, 90-1 CPD ¶ 373. An amendment is not material where it either has no effect or merely a negligible effect on price, quantity, or delivery of the item bid upon (K Servs., supra); where it does not impose any legal obligation on the bidder different from those imposed by the original solicitation (Angus Fire Armour Corp., B-237211.2, Jan. 18, 1990, 90-1 CPD ¶ 68); or where it merely clarifies an existing requirement, or restates information already in the solicitation. Star Brite Constr. Co., Inc., supra.

Amendment No. 1 merely stated that the notice to proceed would not be issued until February 1995. This information is wholly consistent with the original IFB which provided that Phase 1 would not commence until February 27, 1995. It further restated that Phase 3 of the asbestos abatement would commence on April 27, 1995, information that already appeared in the solicitation. Since the amendment did not impose additional obligations on the bidders, CEA's failure to acknowledge this amendment may properly be waived; the amendment had no impact whatsoever on its bid.

With respect to amendment No. 2, the protester merely makes the general assertion that bidders are required to factor into their bids the costs associated with all contract provisions. However, in this case, the agency correctly determined that the amendment, which included updated versions of various FAR clauses, outlined above, and included a technical correction to the "Warranty of Construction" clause at FAR 52.246-21, had no impact on price. For example, this amendment included the updated version of the "Prompt Payments for Construction Contracts" clause at FAR § 52.232-27, which removed the statement that no interest penalty would be paid on contracts awarded to foreign vendors outside the United States for work performed outside the United States and removed the definition of "foreign vendor" from the clause. Since CEA is a domestic concern and the work is to be performed in the United States, removal of this language could not have affected CEA's bid. Because none of the changes in amendment No. 2

affected the bid price or the legal obligation of the bidders, CEA's failure to acknowledge this amendment was a minor informality that properly was waived by the agency.

The protest is denied.

/s/ Paul Lieberman
for Robert P. Murphy
General Counsel